

§ 137.45

33 CFR Ch. I (7–1–14 Edition)

§ 137.45 Interviews with past and present owners, operators, and occupants.

(a) Interviews with owners, operators, and occupants of the facility and the real property on which the facility is located must be conducted for the purposes of achieving the objectives and performance factors of § 137.30(a) and (b).

(b) The inquiry of the environmental professional must include interviewing the current owner and occupant of the facility and the real property on which the facility is located. If the facility and the real property on which the facility is located has multiple occupants, the inquiry of the environmental professional must include interviewing major occupants, as well as those occupants likely to use, store, treat, handle or dispose of oil or those who have likely done so in the past.

(c) The inquiry of the environmental professional also must include, to the extent necessary to achieve the objectives and performance factors in § 137.30(a) and (b), interviewing one or more of the following persons:

(1) Current and past facility and real property managers with relevant knowledge of uses and physical characteristics of the facility and the real property on which the facility is located.

(2) Past owners, occupants, or operators of the facility and the real property on which the facility is located.

(3) Employees of current and past occupants of the facility and the real property on which the facility is located.

(d) In the case of inquiries conducted at abandoned properties where there is evidence of potential unauthorized uses or evidence of uncontrolled access, the environmental professional's inquiry must include an interview of at least one owner or occupant of a neighboring property from which it appears possible that the owner or occupant of the neighboring property could have observed use or other presence or likely presence of oil.

§ 137.50 Reviews of historical sources of information.

(a) Historical documents and records must be reviewed for the purposes of

achieving the objectives and performance factors of § 137.30(a) and (b). Historical documents and records may include, but are not limited to, aerial photographs, fire insurance maps, building department records, chain of title documents, and land use records.

(b) Historical documents and records reviewed must cover a period of time as far back in the history of the real property to when the first structure was built or when it was first used for residential, agricultural, commercial, industrial, or governmental purposes. The environmental professional may exercise professional judgment in context of the facts available at the time of the inquiry as to how far back in time it is necessary to search historical records.

§ 137.55 Searches for recorded environmental cleanup liens.

(a) All appropriate inquiries must include a search for the existence of environmental cleanup liens against the facility and the real property on which the facility is located that are filed or recorded under Federal, State, tribal, or local law.

(b) All information collected by persons specified in § 137.1(a) rather than an environmental professional regarding the existence of environmental cleanup liens associated with the facility and the real property on which the facility is located may be provided to the environmental professional or retained by the applicable party.

§ 137.60 Reviews of Federal, State, tribal, and local government records.

(a) Federal, State, tribal, and local government records or databases of government records of the facility, the real property on which the facility is located, and adjoining properties must be reviewed for the purposes of achieving the objectives and performance factors of § 137.30(a) and (b).

(b) With regard to the facility and the property on which the facility is located, the review of Federal, State, and tribal government records or databases of the government records and local government records and databases of the records should include—

Coast Guard, DHS

§ 137.60

(1) Records of reported oil discharges present, including site investigation reports for the facility and the real property on which the facility is located;

(2) Records of activities, conditions, or incidents likely to cause or contribute to discharges or substantial threat of discharges of oil, including landfill and other disposal unit location records and permits, storage tank records and permits, hazardous waste handler and generator records and permits, Federal, tribal and State government listings of sites identified as priority cleanup sites, and spill reporting records;

(3) Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) records;

(4) Public health records;

(5) Emergency Response Notification System records;

(6) Registries or publicly available lists of engineering controls; and

(7) Registries or publicly available lists of institutional controls, including environmental land use restrictions, applicable to the facility and the real property on which the facility is located.

(c) With regard to nearby or adjoining properties, the review of Federal, State, tribal, and local government records or databases of government records should include the identification of the following:

(1) Properties for which there are government records of reported discharges or substantial threat of discharges of oil. Such records or databases containing such records and the associated distances from the facility and the real property on which the facility is located for which such information should be searched include the following:

(i) Records of National Priorities List (NPL) sites or tribal- and State-equivalent sites (one mile).

(ii) Resource Conservation and Recovery Act (RCRA) properties subject to corrective action (one mile).

(iii) Records of Federally-registered, or State-permitted or -registered, hazardous waste sites identified for investigation or remediation, such as sites enrolled in State and tribal voluntary cleanup programs and tribal- and

State-listed brownfield sites (one-half mile).

(iv) Records of leaking underground storage tanks (one-half mile).

(2) Properties that previously were identified or regulated by a government entity due to environmental concerns at the facility and the real property on which the facility is located. The records or databases containing the records and the associated distances from the facility and the real property on which the facility is located for which the information should be searched include the following:

(i) Records of delisted NPL sites (one-half mile).

(ii) Registries or publicly available lists of engineering controls (one-half mile).

(iii) Records of former CERCLIS sites with no further remedial action notices (one-half mile).

(3) Properties for which there are records of Federally-permitted, State-permitted or -registered, or tribal-permitted or -registered waste management activities. The records or databases that may contain the records include the following:

(i) Records of RCRA small quantity and large quantity generators (adjoining properties).

(ii) Records of Federally-permitted, State-permitted or -registered, or tribal-permitted landfills and solid waste management facilities (one-half mile).

(iii) Records of registered storage tanks (adjoining property).

(4) A review of additional government records with regard to sites identified under paragraphs (c)(1) through (c)(3) of this section may be necessary in the judgment of the environmental professional for the purpose of achieving the objectives and performance factors of §§ 137.30(a) and (b).

(d) The search distance from the real property boundary for reviewing government records or databases of government records listed in paragraph (c) of this section may be modified based upon the professional judgment of the environmental professional. The rationale for the modifications must be documented by the environmental professional. The environmental professional may consider one or more of the

§ 137.65

33 CFR Ch. I (7–1–14 Edition)

following factors in determining an alternate appropriate search distance—

- (1) The nature and extent of a discharge.
- (2) Geologic, hydrogeologic, or topographic conditions of the property and surrounding environment.
- (3) Land use or development densities.
- (4) The property type.
- (5) Existing or past uses of surrounding properties.
- (6) Potential migration pathways (e.g., groundwater flow direction, prevalent wind direction).
- (7) Other relevant factors.

§ 137.65 Visual inspections of the facility, the real property on which the facility is located, and adjoining properties.

(a) For the purpose of achieving the objectives and performance factors of § 137.30(a) and (b), the inquiry of the environmental professional must include the following:

(1) A visual on-site inspection of the facility and the real property on which the facility is located, and the improvements at the facility and real property, including a visual inspection of the areas where oil may be or may have been used, stored, treated, handled, or disposed. Physical limitations to the visual inspection must be noted.

(2) A visual inspection of adjoining properties, from the subject real property line, public rights-of-way, or other vantage point (e.g., aerial photography), including a visual inspection of areas where oil may be or may have been stored, treated, handled or disposed. A visual on-site inspection is recommended, though not required. Physical limitations to the inspection of adjacent properties must be noted.

(b) Except as in paragraph (c) of this section, a visual on-site inspection of the facility and the real property on which the facility is located must be conducted.

(c) An on-site inspection is not required if an on-site visual inspection of the facility and the real property on which the facility is located cannot be performed because of physical limitations, remote and inaccessible location, or other inability to obtain access to the facility and the real property on which the facility is located after good

faith efforts have been taken to obtain access. The mere refusal of a voluntary seller to provide access to the facility and the real property on which the facility is located is not justification for not conducting an on-site inspection. The inquiry of the environmental professional must include—

(1) Visually inspecting the facility and the real property on which the facility is located using another method, such as aerial imagery for large properties, or visually inspecting the facility and the real property on which the facility is located from the nearest accessible vantage point, such as the property line or public road for small properties;

(2) Documenting the efforts undertaken to obtain access and an explanation of why such efforts were unsuccessful; and

(3) Documenting other sources of information regarding the presence or likely presence of oil at the facility and the real property on which the facility is located that were consulted according to § 137.30(a). The documentation should include comments, if any, by the environmental professional on the significance of the failure to conduct a visual on-site inspection of the facility and the real property on which the facility is located with regard to the ability to identify conditions indicative of the presence or likely presence of oil at the facility and the real property.

§ 137.70 Specialized knowledge or experience on the part of persons specified in § 137.1(a).

(a) For the purpose of identifying conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located, persons specified in § 137.1(a) must take into account their own specialized knowledge of the facility and the real property on which the facility is located, the area surrounding the facility and the real property on which the facility is located, and the conditions of adjoining properties and their experience relevant to the inquiry.